IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5706 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KASAM HUSSAIN THAIN THRO' POA HUSSAIN HAJI HAROON

Versus

COMPETENT AUTHORITY SAFEMA

Appearance:

1. Special Civil Application No. 5706 of 2001
MR BC DAVE for Petitioner No. 1
MR DN PATEL, Sr. Central Govt. Standing Counsel for the Respondents.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/04/2002

ORAL JUDGEMENT

1. Rule. Mr. D.N. Patel, learned Central Govt. Standing Counsel waives service of notice of Rule on behalf of the respondents.

2. The petitioner who is son of the detenu Hussain

Haji Haroon was served with a show cause notice dated 5-12-1983 u/s 6 (1) of the Smugglers & Foreign Exchange Manipulator (Forfeiture of Property) Act 1976 (hereinafter referred to as the Act) to show the cause as to why the properties described in the show cause notice should not be forfeited as the same are illegally acquired properties within the meaning of Section 3 (1) (c) of the Act. On receiving the same, the petitioner has replied to the said notice to the authority concerned wherein it was categorically and specifically stated that the properties acquired by the petitioner are not illegally acquired and therefore the same cannot be forfeited. The petitioner requested the authority concerned to withdraw the show cause notice in question. However, the respondent no. 1 passed order dated 28-2-1996 forfeiting the petitioner's properties shown at Sr. No.1 namely Vessel S.V. 'Noorani' bearing registration No. MHV 595 on the ground that the same was acquired out of illegal money of his father Hussain Haji Haroon under the Act.

3. Being aggrieved by the order dated 28-2-1996 passed by the respondent no. 1, the petitioner filed Appeal u/s 12 of the Act before the Appellate Tribunal (Forfeited Property) at New Delhi (hereinafter referred to as the "Appellate Tribunal"). The said appeal was allowed by the Tribunal and the matter was remanded back to the respondent no. 1 authority for rehearing on the basis of the evidence on record only. Thereafter, the petitioner appeared before the respondent no.1 and after giving opportunity of hearing to the parties concerned, the respondent no. 1 is the competent authority passed the order dated 18-8-1999 by which the Vessel MHV 595 and Ambassador Car No. GJN 5221 were forfeited under the provisions of Section 7 of the Act.

4. Being aggrieved and dissatisfied by the order dated 18-8-1999 passed by the competent authority, the petitioner preferred an appeal before the Appellate Tribunal at New Delhi and after hearing the parties, the Appellate Tribunal passed order dated 4-2-2000 whereby the appeal of the petitioner was dismissed which is giving rise to prefer the present petition.

5. I have heard Mr. B.C. Dave learned counsel for the petitioner and learned Sr. Central Govt. Standing Counsel Mr. D.N. Patel, for the respondents.

6. Learned counsel for the petitioner has raised only contention that the petitioner has explained the source of his income, as under :

Rs.47,450/- Out of past savings from salary for the period from April 1969 to April 1982 while working in the ship.

Rs.10,000/- Personal loan from Hiralal Ravaji.

Rs.10,000/- Personal loan from Jiva Vira.

7. The learned counsel for the petitioner has also drawn my attention towards para 5 of impugned order dated 4-2-2000 and argued that the petitioner has also submitted the statement which was accepted by the authority. He has also drawn my attention towards Civil Suit No. 20 of 1987 filed by one Dolatlal Khetsi & Co. against the present petitioner. So far as Ambassador Car is concerned, learned counsel for the petitioner has drawn my attention towards explanation put foward by the petitioner which shows that an amount of Rs.5,500/- is derived from his past saving and he had obtained an amount of Rs.4000/- from his grand father. He has argued that there is ample evidence on record which satisfactorily explains the source of the income and the properties acquired by the petitioner and the authorities below ought to have accepted the same and the properties in question ought to have been released by the authority concerned. In the alternative, he has argued that imposition of fine u/s 9 of the Act 1976 would have served the ends of justice.

8. Mr. Patel, Ld. Sr. Central Govt Standing Counsel has taken me to page Nos. 15 and 16 of the order dated 18-8-1999 of the respondent no. 1. He has also drawn my attention towards page 47 more particularly para 10 of the affidavit-in-reply filed the opponent no. 1. He has argued that for not accepting the explanation put forward by the petitioner, the Appellate Tribunal has given cogent reasons as to why the authority has come to a conclusion that the part of the evidence in question are concocted one and for rest, the Appellate Tribunal has come to the conclusion that it is an afterthought.

9. I have gone through the reasoning part of the order passed by the authority which has been confirmed by the Appellate Tribunal and in my view there is no illegality either on law or on the facts, calling for interference by this Court at this stage. Admittedly, Spl. Civil Suit No. 20 of 1987 has been filed on the basis of running Accounts and the Appellate Tribunal has

come to a conclusion that it has nothing to do with the properties in question when the show cause notice has been issued in the year 1983. The Court has put a specific question to the learned counsel for the petitioner as to whether he is aware of the averments made in the reply given to the show cause notice and in answer he has informed the Court that he is not aware about the same. However, the fact remains that it is either an afterthought or concocted one. It is prima facie established that consent decree has been passed by the Court concerned in the aforesaid special civil suit so far as the Ambassador Car in question is concerned and for that detailed discussion has been made by the authority concerned as well as the Appellate Tribunal in their respective orders and hence I do not repeat the same at this stage. Therefore, the impugned order dated 18-8-1999 passed by the authority and confirmed by the Appellate Tribunal vide order dated 4-2-2000 is reasoned order and hence the explanation put foward by the petitioner has not been rightly accepted either by the authority or the Appellate Tribunal on the basis of the cogent reasons and evidence.

10. In view of the aforesaid reasons, I do not find any reason to interfere with the order dated 18-8-1999 passed by the respondent no. 1 authority and the order dated 4-2-2000 passed by the Appellate Tribunal, in exercise of extra ordinary jurisdiction conferred under Article 226 of the Constitution of India. Therefore, this petition is dismissed. Rule is discharged, with no order as to costs.

(R.P. Dholakia,J.)

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/JVSatwara/